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THE LATE LORD JAMES OF HEREFORD

Born in 1828, of a surgeon at Hereford, educated at Cheltenham, and called to the Bar from the Inner Temple in 1852, Lord James of Hereford, "one of the most widely esteemed of all the notable lawyers of modern times," practised for a while at the Lord Mayor's Court, and then removed to Westminister where he commanded considerable practice at the Court of Exchequer. As is the case with every English lawyer of renown, Lord James took as much interest in politics as in his profession. For sixteen years he represented Taunton in the House of Commons; and in 1873, just four years after he entered the House, he was made Solicitor-General. But with the resignation of the Gladstone Ministry and the temporary downfall of the Liberal party, Mr. Jame's tenure of office was necessarily cut short. However, he was again, during the General Elections, returned by Taunton; and was, in 1880, appointed Attorney-General, in which capacity he rendered yeoman service to his veteran leader, Mr. Gladstone, in safely piloting the Irish Land Act through the shoals and quicksands of the Houses of Parliament. But he did not stand by the Liberals through thick and thin; and the rift in the flute was for the first time revealed when the Home Rule Bill struck the jarring note of discord; and Mr. James and ninety-two other dissentient Liberals, henceforward known as Liberal—Unionests voted against it. It was, of course, a foregone conclusion that Lord James's political apostacy had dealt the death-blow to his professional aspirations; and the Woolsack, the highest ambition of all the eminent lawyers in England was bestowed upon more constant adherents Lord Herschell and Lord Halsbury. In 1895, Sir James was made a Law Lord; and between 1895 and 1902, he held the post of Chancellorship of the Duchy of Loncaster.

In February, 1896, Lord James was appointed a member of the Judicial Committee of the Privy Council. But he does not seem to have taken as much part, in the work before them, as some other eminent members like Lord Macnagthen or Lord Hobhouse. No Indian case of importance, so far as our research went, has been dealt with by Lord James, although His Lordship was a notable party to certain leading cases decided on appeal from the colonies. But during the last decade he took part in almost every case that came up before that august tribunal. It is said that the book proves the author; even so, the judgments reveal the Judge. It is impossible for one who studies His Lordship's Judgments with some care, not to be struck with the sound, strong common-sense which he brings to bear upon all questions before him, with his absolute freedom from technicalities, and with that spirit of broad minded liberalism which he had evinced in politics. Nor can one who goes through his Judgments fail to

notice their lucidity, the absence of any obiter dicta therein, and their conciseness.

Lord James's first decision of great general importance was delivered in that well-known case of *Allen* v. *Flood*, [1898] A. C. 1, wherein he agreed with the majority and reversed the decision of the Court of Appeal. The question there was "Is it actionable for A to solicit and persuade B not to enter into a contract with C." His Lordship reviews the common-sense limitations to a cause of action based upon this allegation by applying the principle laid down by Lord Esher in *Bowen* v. *Hall* to the ordinary affairs of life and comes to the conclusion "It seems somewhat contrary to common-sense that an interference which is rightful when applied to general subjects becomes wrongful when a trade or business is subjected to it." As illustrations of his deep-rooted liberal tendency, we may refer to his numerous decisions on the Workman's Compensation Act which he has consistently interpreted in favour of the workmen wherever possible [(1906) A. C. 330, (1910) A. C. 220, 486, and 498.] In the famous case of "*Amalgamated Society of Railway Servants* v. *Osborne*, [1910] A. C. 87 the question that arose for decision was one of great political importance ; and it was whether, after the passing of the Trade Union Act of 1871, the application of funds for Parliamentary representation was a lawful object of a Trade Union. The Earl of Halsbury, and Lords Macnaghten and Atkinson affirmed the decision of the Court of Appeal on the ground that any rule which purports to confer on any Trade Union, registered under the Act of 1871, a power to levy contributions from members to secure Parliamentary representation is *ultra vires* and illegal. But Lord James who also came to the same conclusion preferred to base his decision upon a more far-sighted principle which atonce savours of his liberal political creed, *viz.*, the condition that every member of the trade union is compelled to contribute to the support of a member of Parliament who, in his turn, is obliged to answer "the whip of the Labour Party" means that the member undertakes to forego his own judgment and to vote in Parliament in accordance with the tabulated opinion of the Labour Party. And such a vote, according to his Lordship, would have to be given in respect of all matters, including those of a most general character, such as confidence in a Ministry, or the policy of a Budget—matters, unconnected, directly at least with the interests of Labour. More clearly still are brought out his characterestic liberal sympathies, in [1906] A. C. 384, where it had to be decided if a Trade union was or was not liable in damages for maintaining workmen who had struck work. In the opinion of Lord James a Trade Union was not liable, because "when the assistance was given, that is, when the strike pay was voted, the unlawful acts had been committed, all the contracts of employment were terminated, and employers and employed were, in respect of contracts, entirely unconnected. So that the effect of the grant of strike pay was not to cause or induce the commission of an unlawful act, but to place the workmen in the position of being able to maintain themselves without entering into a new contract of labour."

But however broad-minded and sympathetic he might be by nature and whatever might be his general attitude upon constitutional questions, Lord James never failed to exercise in the discussion of any question, his independent sound practical judgment as *In re Lord Kinross*, [1905] A. C. 468 where a peer's

right to be heard at the bar of the House of Lords was upheld by a majority, and Lord James wrote a dissenting judgment one of his grounds therefor being this direct and simple question;

"Three or four years ago, we had a peer on his trial for felony. If this permission is granted, what will there be to prevent a peer from being heard as an advocate at the bar and then coming in and taking part in the decision of the very case in which he has been an advocate?" Always Lord James took special care to view questions in all their relevant aspects, but from obiter dicta, positive assertions, and superfluous theories, he scrupulously kept aloof. So rigidly was he determined upon not committing himself to unnecessary discussions, that, sometimes he even refrained from expressing his opinion on matters which would have been the clearer for it. In *Kirkewood* v. *Gadd* [1910] A. C. 428 he positively refused to give a definition of the meaning of the words "carrying on business." "I repeat," he says, "that it would be dangerous to do. so. Evasion might follow. I can understand an ingenious method of evading or breaking the statute being resorted to, as by a system of convassing from house to house, and a definition may tend to protect such things." More than either his innate liberalism, or his strong practicality was his freedom from cramping technicalities which hedge round and sap the kernel of substantial justice. This admirable trait of Lord James which is to be welcomed in all Judges is seen reflected in his well-reasoned Judgment in *Samuel* v. *Newbold* [1906] A. C. 461 He wanted, therein, to construe the Money Lenders Act, "without introducing into it arbitrary limitations." "Excessive interest of itself is sufficient to render a contract harsh and unconscionable. Proof of excessive interest may, of itself, be, therefore, sufficient to entitle the debtor to relief. What amounts to excessive interest is to be determined by the tribunal in each case, the question of risk being a material matter for consideration. When excessive interest is appearently established, any facts that tend to show that such excess does not render the contract harsh and unconscionable should be proved by the lender." Such appeared to him to be the construction that should be put upon the Money Lenders Act.

His trait of literal and practical construction is also brought out in his Judgment in [1899] A. C. 192 in which His Lordship observed "Doubtless the contents of a preamble of an Act of Parliament cannot for any purpose control the actual clear provision of the statute, but if the wording of the statute give rise to doubts as to its construction the preamble can be and *ought to be* referred to in order to arrive at the proper construction to be put upon the enacting portion of the statute." The same characteristic distinguishes the Judgment he delivered on the Judicial Committee in a case from New South Wales [1899] A. C. 362 where he held that "Although Courts of Equity are not within the words of the statute of limitations yet they are within its spirit and meaning and have uniformly adopted its rules."

Every question that was placed before him received the impress of his strong personality. No Judgment did he deliver that was not the reflex of his peculiar characteristics. To him translation to that exalted position which he so well adorned did not mean the transformation or even

dilution of his cherished ideals or old principles. Constant to his free, liberal political faith, anxious to apply practical common sense as the touchstone to every thought and conduct, and caring always for matter and not form, for substance and not shadow, Lord James carried these admirable traits to his province as a Judge; and it is these qualities that have made him so widely respected and vastly loved. In April 1910, he retired from the Privy Council and the House of Lords; and we regret that he was not spared longer to enjoy his well-earned rest. In him England has lost a great Liberal, a distinguished lawyer and an eminent Judge.

THE SPECIAL MARRIAGE AMENDMENT BILL.

(*Continued from p.* 10.)

The opponents of the Bill may be divided into two classes:—

1. Those who approve generally of the policy and principles of the Bill, but object to some of its provisions. They take strong exception to the application of the Indian Divorce Act to marriages that may be contracted under this Bill, when it becomes law.

We are inclined to think that there is more of sentiment than of reason in this objection. When marriage is reduced to a mere contract, it logically follows that the parties to it should possess the same liberty to withdraw from it, as the law allows them in the case of every other contract. The Law of Divorce is, therefore, found to prevail among all communities which regard marriage more or less as a contract. It is less liberal and more strict among those people in whose conception of marriage an element of religion enters, as the English, than among those who treat it as a contract pure and simple, as the Mohammedans.

2. The by far more numerous class of opponents who do not want the Bill at all.

Their opposition is based on two grounds:—

1. Religious and legal; and
2. Sociological and sentimental.

In the first place, they say that marriage, according to Hindu Law, is a Sacrament and that it is indissolubly bound up with the Hindu religion, which is itself based on the caste system. So that, if marriages between different castes were legalised, it would be laying the axe at the root of the Hindu religion itself. We may say at once that we have no sympathy with this class of critics. We are not disposed to raise the cry of 'religion in danger.' We are sure that the Hindu religion which has survived more serious onslaughts, will not succumb to this Bill. There is greater force in the other objections urged by the opponents of the Bill, which we will now notice.

It is said that the Bill, even if confined to the Hindus, will give rise to great legal difficulties. We shall now proceed to indicate a few of them here.

There are some rules of Hindu Law which are peculiar to the twiceborn castes and do not apply to the sudras. Then the question may arise as to what caste the offspring of a Brahmin by a Sudra woman will belong, and as to whether they will be governed by the law of their father or mother. Again, suppose a Brahmin marries a Sudra wife and dies, leaving no issue. Can the widow adopt a son without any religious ceremonies, as among the sudras, or will she have to perform them by proxy, as according to the law of her husband, they are necessary to validate an adoption to him? Again, will

the sudra widow of a brahmin be entitled to maintenance out of the joint estate, or to residence in the family house, supposing for one moment that the status of jointness was not severed? Or will the marriage itself operate as a severance of the joint status? To say that these are all mere matters of detail or that they can be left to be adjudicated upon by courts, as they arise, is only a disingenuous attempt to avoid the difficulties of the situation.

In the next place, the Bill is strongly opposed on sociological grounds. Promiscuous intermarriages and the consequent commingling of the diverse races of India will tend in the opinion of those who are competent to judge to the lowering of national efficiency all round; and they point to the example of ancient Rome and modern Spain where such marriages have caused national deterioration. India has been described as an anthropological museum, in which are found types representing various race cultures, from the highest to the lowest. And he would indeed be a bold man who would advocate intermarriage between such widely divergent races. It may be said that such marriages are not within the range of practical politics, and that if ever a man or woman of the highest caste should love and like to marry a woman or man of the lowest, the law has no business to say 'no' to them. But in our opinion, if what the sociologist say is true, the state, and law ought to step in and interdict such unions in the paramount interests of the future well-being of this country and of the generations yet unborn.

Lastly, it is said that the sentiment of the large mass of the Hindus is opposed to this violent change in their marriage law. There is a tendency in some quarters to make light of it and to treat it as a thing of no moment. But we think that the sentiment of a whole nation on a question like this ought to be respected, and not trifled with by the Leglisature. It is idle to say that the opposition is engineered by this or that particular section of the Hindus. From the many meetings that have been held to protest against the Bill, it is evident that the opposition is cosmopolitan in its character.

It is hardly necessary to add that the above objections are urged against marriages only between the main castes. So far as marriages between the sub-castes go, we hear on reliable authority that they are really taking place without seriously being called in quetion: should however there be any doubt as to the legality of such unions, we have reasons to believe that there will be no serious objection to the passing of a bill to validate such marriages.

In our opinion there is yet a graver objection to the proposed law, which has not been emphasised hitherto to the extent that it deserves. We think that the bill is opposed to all true principles of legislation in a civilised state The ultimate criterion of every good law is its tendency to increase the general happiness. 'The greatest happiness of the greatest number' has always been recognised as the true standard and test by which right legislation is distinguished from wrong. We do not think that the present bill satisfies this test. Before a law of this kind is enacted, a clear case of necessity has to be made out. It must be shown that there is an urgent demand for the proposed reform by an appreciable section of the people. It was pointed out by Mr. Dicey in his well-known work on "Law and Public Opinion," how the course of

legislation in England during the last century had always followed the trend of public opinion in that country. The true function of the legislature in every civilised country is to approximate law to public opinion, and not to force the latter into a particular channel by enacting a new law. It has been said by another eminent writer that "it is obviously of fundamental importance to Government that the rules it lays down and enforces should come as little as possible into conflict with positive morality;" and by *positive morality* is meant "the rules of duty supported by the sanctions of public opinion in any given age and country.', "The actual condition of the positive morality of the community—including under the term all opinions as to the bad and good effects of actions—confines within rather narrow limits the power of an enlightened Government to act upon the community governed in conformity to the conclusions of the highest political wisdom of the time." The question therefore, resolves into this, is there such unequivocal public opinion in favour of the Bill in this country? Are its provisions in accord with, nay, are they not repugnant to the 'positive morality' prevailing among the great bulk of the Hindus? In our opinion there can be but one answer to this question. When the Legislature, overlooking this consideration, weakly yields to the agitation of a few advanced radicals and enacts a social law, it is bound to prove a failure. The Widow Remarriage Act, the Converts' Relief Act, and the Special Marriage Act itself, are standing examples of the fate which overtakes enactments got out of an unwilling Legislature in the teeth of popular opposition by a few doctrinaire reformers. These considerations compel us to withhold our assent to the proposed legislation, notwithstanding our entire sympathy with the objects of the Hon'ble Mover of the Bill. At the same time we are free to confess that we have serious doubts as to how far the Bill, even if passed into law, would achieve the object he has so much at heart.

RYOTI LAND AND PRIVATE LAND.

Ever since the passing of the Madras Estates Land Act disputes of a serious nature have arisen in some of the important Zamindaries in the Northern districts between landholders and their tenants with regard to their respective rights in certain classes of lands. The lands involved in those disputes are claimed to be *ryoti* lands by the tenants while the landholders claim them to be their *private* lands. The litigation in this matter, which is likely to be complicated and protracted, being in its initial stages we have not as yet had any pronouncement of the High Court on the interpretation that is to be placed on those provisions of the Estates Land Act that have given rise to this litigation. Section 6 (1) no doubt contains a clear unequivocal declaration of occupancy rights in favour of ryots who were in possession of *ryoti* lands on the date of the Act. Section 19 of the Act contains an equally distinct protection of the landholder's rights in his *private* land. But the various provisions of the Act relating to ryoti and private lands in an Estate are by no means so clear as to place the question whether certain classes of lands are *ryoti or private* beyond doubt. The lands in respect of which disputes have already arisen may be grouped under three different heads.

1. Lands originally classed as *Seri* lands but which were let as *Kambalam*

lands after they came into the Zamindar's possession by relinquishment or purchase —the purchase being effected sometimes by act of parties *inter vivos* and sometimes at auction sales held by Civil Courts.

2. Lands originally classed as *waste* in the landholder's accounts and which are now specifically let as *Kambattam* lands.

3. Lands that were never classed as *Seri* but always leased as *Kambattam.*

In this article I propose to deal with the first class of lands, reserving the consideration of the second and third classes of land for a future occasion.

The characteristic feature of the first of the three classes of lands mentioned above is the merger of the occupancy right with the landholder's interest in the land. I shall first examine the provisions of the Act relating to the effect of such merger. The first provision that we come across is Subsection (2) to section 6 which runs as follows :—

"Where land held by a ryot with a permanent right of occupancy is surrendered or abandoned, or, save in the cases falling within sub-section (4) of section 8, and the exception to section 8, comes into the possession of the landholder and the landholder admits any person to possession of the same within a period of ten years from the date of surrender, abandonment or coming into possession, the person so admitted shall have a permanent right of occupancy therein" This sub-section deals with lands purchased by the landholder at a rent sale, or acquired by him by gift or devise, either before or after the passing of this Act (except in an estate falling under section 32 (d) and lands surrendered, or abandoned, or purchased otherwise than at a rent sale for valuable consideration, after the passing of the Act. Land purchased at a rent sale or acquired by gift or devise by the landholder are indisputably ryoti lands, whether the purchase or acquisition takes place either before or after the Act and are therefore outside the scope of this discussion altogether. Lands that are surrendered or abandoned after the Act, or purchased otherwise than at a rent sale for valuable consideration after the passing of this Act are also undoubtedly ryoti lands and are similarly outside the scope of this discussion. It may be contended that this sub-section deals with lands surrendered or abandoned before passing of this Act. But this contention will not bear scrutiny for a minute, for, construed grammatically as well as by comparison with the other sub-sections of section 6 and Section 8, this sub-section clearly deals only with lands abandoned or surrendered after the Act. Morover this sub-section seems to be quite unnecessary in the Act because all that is contained in this subsection is included in sub-section (1). Land held by a ryot with permanent right of occupancy which comes into landholder's possession in any one of the ways specified above is ryoti land. It will be ryoti land other than old waste if re-let within ten years and in that case sub-section 1 to sec. 6 becomes applicable. If it is retained for more than ten years in the landholder's possession it becomes old waste and the sections relating to old waste become applicable to it. If its aim is to exempt sub-section 4 to section 8 and the exception to that section, the exemption may well have been tacked to sub-section (1) but the words "subject to the provisions of this Act" with which that subsection is prefaced are enough for the purpose. So in any view the retention of this sub-section cannot be justified except perhaps on the ground of *pro abundante cautela.* This

subsection does not therefore help us one way or the other.

Then we have sub-sections (1)(2) and (3)to section 8. Sub-section (1) is in these terms; "whenever before or after the commencement of this Act the entire interests of the landholder and the occupancy ryot in any land in the holding have become united by transfer, succession or otherwise in the same person, such person shall have no right to hold the land as a ryot but shall hold it as a landholder ; but nothing in this sub-section shall prejudicially affect the right of any third person." This sub-section literally applies also to cases of occupancy ryots acquiring a landholder's interest. This application of it is absolutely inconsistent with the explanation to subsection 6 to section 6. Therefore this sub-section has to be limited to cases of a full landholder acquiring the interests of the occupancy ryots. Sub-section 2 deals with the case of one of several joint landholders acquiring the interest ot an occupancy ryot. Then subsection (3) lays down. "The merger of an occupancy right under subsection 1 and 2 shall not have the effect of converting ryoti into private land."

Then we have sections 181, 183 and 185. Section 181 seems to be really unnecesssary for the sections named therein have nothing in them to show that they apply to landholder's private land. Section 185 which is the most important one to be construed in this connection lays down rules for the determination of the landholder's private land. Though under the concluding portion of section 183 the evidence of the nature described in section 185 is to guide only a revenue officer, yet by the insertion of these words "when in any suit or proceedings" in section 185, the rules contained therein are giveu a universal application and are obligatory on the Civil Court also. Section 185 runs as follows : "when in any suit or proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July. 1895 specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown." Then follows a proviso which lays down a conclusive and irrebuttable presumption in favour of the land being private land if the landholder had cultivated it himself or by hired labour for a period of twelve years immediately before the Act.

The question now is whether having regard to all these provisions in the Act if a ryoti land passed into the landholder's possession by relinquishment or purchase before the act and was dealt with by him as his private land except in a manner which will bring it within the proviso to section 185 it will be classed as private or ryoti for the purposes of section 6 (1) at the commencement of the Act. I shall make the question at issue clearer by means of an illustration. Suppose in 1870 a landholder admittedly acquired the interest of an occupancy, ryot in a ryoti holding and ever since that time he let it out specifically as his private land to various ryots or his own tenants by increasing the rents and changing the tenants at his pleasure. Further suppose that the muchilika executed by the ryots since 1870 contained an admission that the land was the landholder's private land and a stipulation that the tenants would relinquish it on the expiry of the period without notice to quit. Again suppose what

the landholder can establish by a local custom or other evidence that this course of dealing has the effect of converting the land into private and that it has been so converted by an express or implied contract. Is it private land or ryoti land on the first day, of July 1908 ? The landholders contend that it is private land while the ryots contend that it is ryoti land. Which of these contentions is in consonance with a sound interpretation of the Act? The answer to this question depends on the answer to be given to the following two questions. (1) Is the rule about merger embodied in sub-section (3) to section 8 retrospective in the sense that it destroys the effect of contracts entered into before the Act for converting ryoti land into private land or does it merely lay down that merger *by itself* has not the effect of converting ryoti into private land without touching the operation of the express and implied contracts entered into before the Act ? (2) Do the rules that are laid down by section 185 for the determination of the landholder's private land come into operation only when there is no other evidence whatever as to the nature of the land or are they also to be applied to a land which is admitted or proved to have been ryoti land when it passed into the landholder's possession before the Act ? I shall proceed to answer these questions.

(*To be continued.*)

V. RAMADOSS.

SYNOPSIS OF INDIAN CASES.

Jose Antonio v. *Francisco Antonio* 35 B. 24.

Where in the Court of First Instance neither party raised any objection on the ground of Jurisdiction. nor was any issue raised relating to it, and where objection to jurisdiction was taken for the first time in appeal, held that *prima facie* the market value stated in the plaint determined the Jurisdiction ; that the tacit admissions of the parties dispensed with proof on the question, in pursuance of Sec. 58 of the Indian Evidence Act ; and that where the law confers no Jurisdiction, the parties cannot by consent give it where none exists.

Rustomji Ardeshir Irani v. *Vinayak Gangadher Bhat*, 35 B. 29.

Where plaintiff, purchaser at a Court sale, of the defendant's interests under an unregistered trust deed, sued for possession, or return of purchase money, on proof of total failure of consideration,held that the suit was not cognizable by a small Cause Court as there was a prayer for possession ; that the trust-deed compulsorily registrable under Sec. 35 of the Stamp Act must be taken to be non-existent as it cannot be admitted in evidence and that the plaintiff's right to sue is made clear by the provisions of the Civil Procedure Code under which an implied warranty of some saleable interest when the right, title, and interest of a Judgment-debtor is put up for sale is implied and a purchaser's right to the return of the purchase money is recognized.

Wana Mard Ravji v. Natu Walad Musha, 35. B. 35.

Where a decree provided that the plff. should pay by a fixed day a definite sum of money to the defendant and that on default, the suit property was to remain with the latter, and the money was paid in Court and could be paid only three days later as the Court was closed, held that the payment was a valid one since O. XXI. r. 1 of the Civil Procdure Code in-

tends to enact and does enact that payment into Court is a valid compliance with a decree, even though the decree directs payment to the decreeholder.

Irawa Kom Laxmana Mugali v. *Satyappa Bin Shidappa Mugali* 35 *B.* 38.

Where, in a former suit, the grounds for decision turned upon the merits as well as on the point of undervaluation of the suit, and where in the subsequent suit, the plea of *res judicata* was raised, held tnat the ground of undervaluation was sufficient by itself for the dismissal of the previous suit; that the decision of the suit on the merits was unnecessary and cannot have the force of *res judicata*; and that the rejection of a suit on the ground of undervaluation at any stage of it does not make it *res judicata* for the purposes of a subsequent suit on the same cause of action or for a litigation the same title.

Chaganlal Kishoredas v. *The Collector of Kaira* 35 *B.* 42.

Where the plaintiff sued the Collector for a declaration that his order under section 3 of the Bombay Act V of 1862 to the effect that some mortgages in plaintiff's favour were null and void was inoperative owing to the want of notice required by section 424 of the Civil Procedure Code of 1882, held that the true test of an action for the purpose of section 424 is whether the wrong complained of as having been done by the public officer sued amounts first, to a distinct act on his part, and, secondly whether that act purported to have been done by him in his official capacity; that both these elements must combine to render necessary the giving of notice under section 424 as a condition precedent to the suit; and that notice is necessary as the declaration is a distinct act of the Collector done in the exercise of a statutory power and therefore in his official capacity.

In the matter of Meghrag Gangabux 35 *B.* 47.

Where an insolvent applied to the Court for a protection order under Sec. 25 of the Presidency Towns Insolvency Act, held that a similar petition was refused once before is no reason for refusal at present; that Sec. 25 lays down that a diligent debtor should not be left to be harassed by execution creditors and rendered liable to pressure so that one creditor may get undue advantage over another; and that the Court must act in the interests of all the creditors.

Mogilal Premanand v. *Gaurie Shankar Kushalji* 35 *B.* 49.

When the testator's sister, a specific legatee, sued the administrators, for the residue as heir to the testator, and where the suit was contended to be time-barred, held that once the property is vested in trustees for a specific purpose, no resulting trust of the residue, which necessarily arises by operation of law, need be specified in order to bring it within the scope of Sec. 10 of Act XV of 1877.

Talukdari Settlement Officer Guzarat v. *Umia Shankar Narsiram Pandia*, 35. *B.* 73.

Where the settlement officer, in the exercise of his power, under Sec. 79 A of the Bombay Act V of 1879, evicted the occupier of land under a decree of a Civil Court, held that the officer's order was not final and was appealable and that the power under Sec. 79 A. could only be exercised as against persons in wrongful possession.